

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>CHRISTINA J. MIESS, as an individual and as the Natural Mother of CM, GrM and GM, Deceased,</b>	)	
<b>WILLIAM SCHEIDER,</b>	)	
<b>RICHARD HUFFMAN, and</b>	)	
<b>MARK BARTON,</b>	)	
	Plaintiffs,	)
		)
<b>v.</b>	)	
		)
<b>PORT CITY TRUCKING, INC.,</b>	)	
<b>ALVIN LEWIS,</b>	)	
<b>MASTERFOODS USA, INC.,</b>	)	
<b>and MARS, INC.,</b>	)	
		)
	Defendants.	)

**Case No. 4:09CV1124 CDP**

**MEMORANDUM IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT ORDER**  
**REQUIRING EXECUTION AND DELIVERY OF SETTLEMENT AGREEMENT**

COMES NOW Plaintiff Christina Miess, pursuant to L.R. 7-4.01, and for her Memorandum in Support of her Motion for Order Requiring Execution and Delivery of Settlement Agreement and for Sanctions states as follows:

**Facts**

On June 2, 2011, plaintiffs and defendants reached a confidential settlement. On July 22, 2011, this Court held a hearing to approve the settlement. At that hearing, attorney Chandler Gregg represented to this Court that his clients Plaintiffs Barton, Huffman and Scheider were all in agreement with the proposed settlement.

Accordingly, this Court approved the settlement and directed the parties to execute the release and settlement agreement [document 139]. The settlement agreement provides that the

undisputed funds shall be distributed within 30 days of reasonable written notice with payment instructions to defense counsel.

On August 4, 2011, undersigned counsel sent such written notice to defense counsel on behalf of Plaintiff Miess. In response, defense counsel Randy Scheer informed undersigned counsel that Plaintiff Richard Huffman (father of CM, deceased) had not yet executed the settlement agreement. That same day, August 4, undersigned counsel inquired about this signature page with Huffman's counsel, Chandler Gregg, who indicated he would follow up on the matter. See Exhibit 1.

On August 8, 2011, at mediation, Chandler Gregg informed undersigned counsel via text message at 10:55 am that Huffman executed the release and Mr. Gregg would deliver it to Randy Scheer tomorrow (August 9, 2011).

In response, at 1:43 pm on August 8, 2011, undersigned counsel informed defense counsel via email that the executed release would be delivered by Mr. Gregg. See Exhibit 2. Mr. Gregg responded to this email by stating that his clients had instructed him to withhold and NOT deliver the executed releases to defense counsel:

Joel – My clients have instructed me that the releases are to be transferred only upon resolution of the claims including distribution by hearing or otherwise.

See Exhibit 3. Mr. Gregg then verbally told undersigned counsel in the presence of the mediator, Judge Brendan Ryan, that all three of his clients had individually instructed him to withhold the executed releases until all claims had been resolved.

## Argument

Sanctions for this type of dilatory, contumacious conduct were generally supported in Chaganti & Associates, PC v. Nowotny, 470 F.3d 1215 C.A.8 (Mo.) 2006.

In Chaganti, this Court enforced a settlement agreement between the parties and ordered Chaganti to execute the settlement documents. Id. at 1219. Chaganti refused to sign the settlement documents. Id. In response, this Court fined Chaganti \$500 per day. Id.

On appeal, the Eighth Circuit impliedly upheld the sanctions, but remanded so this Court could clarify the reason for the sanctions (ie whether to coerce compliance or compensate an aggrieved party) and how it arrived at the \$500/day figure. Id. at 1224-25.

In this case, either reason for sanctions is applicable: this Court has ordered the Plaintiffs to execute the settlement agreement and their refusal to deliver executed copies is clearly in violation of that Order. Similarly, Plaintiff Christina Miess is aggrieved and prejudiced by this conduct because she cannot access undisputed funds to which she is entitled under the terms of the confidential settlement approved by this Court.

WHEREFORE Plaintiff Miess hereby requests this Court enter its Order requiring Mr. Gregg and his client Huffman to deliver executed releases to defense counsel, Randy Scheer, within five (5) days. Further, if Mr. Gregg or his client fail to comply with this Court's Order, then Plaintiff Miess requests this Court to sanction them with a daily fine to either compensate Plaintiff Miess because she has been aggrieved by not being provided with the promised undisputed settlement funds and/or coerce compliance with this Court's Order. Plaintiff Miess further requests this Court enter its Order awarding her the costs for the time and expense of this unnecessary motion which is required by the obstructionist, bad faith conduct of Huffman and/or

his counsel and for whatever additional relief in law or equity that the Court deems proper in the premises.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 29th day of August, 2011, the foregoing was served upon counsel listed below by Notice of Electronic Filing via the CM/ECF system of the United States Federal Court for the Eastern District of Missouri.

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